

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEPOMED, INC.,

No. C 06-00100 CRB

Plaintiff,

**ORDER**

v.

IVAX CORPORATION,

Defendant.

Now pending before the Court is Plaintiff's Motion for Sanctions Due to Spoliation of Evidence and Defendant's Cross-Motion for Attorneys' Fees. Properly framed, Plaintiff's motion is a motion *in limine*. The "sanctions" it seeks are (1) the exclusion of evidence and (2) a jury instruction on what it perceives as Defendant's misconduct. The Court considers the motion premature. Accordingly, it DENIES the motion without prejudice to Plaintiff's refiling the motion at a more appropriate time, namely, at a pre-trial conference. Defendant's motion for attorneys' fees is DENIED.

**IT IS SO ORDERED.**

Dated: August 21, 2007



CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE